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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,383	08/19/2003	Daniel J. White	TN-2491A	3596
7590	05/02/2006		EXAMINER	
Adan Ayala, Esq. Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286				SHAW, CLIFFORD C
		ART UNIT	PAPER NUMBER	1725

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/643,383
Filing Date: August 19, 2003
Appellant(s): WHITE ET AL.

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Adan Ayala
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/15/2006 appealing from the Office action mailed 8/15/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. On 11/09/2005, appellant filed an amendment after final that included a sheet of drawings. This was in response to an objection made by the examiner in the Final Rejection mailed on 8/15/2005. The amendment after final rejection filed on 11/09/2005 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,298,712 ALEXANDRES 3-1994

4,322,597 HOOKE 3-1982

The prior art acknowledged by appellant in figures 1A, 1B, and 1C of the application drawings and in the discussion of paragraph [0005] of his specification.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexandres (5,298,712) taken with the prior art acknowledged by applicant further taken with Hooke (4,322,597). Figures 1-3 and the discussion in columns 1-3 of Alexandres (5,298,712) disclose a method for manufacturing a battery pack wherein a strap 40 is resistance welded between two cells (one of which cells is shown at 44). The claims differ from Alexandres (5,298,712) in calling for a cell with "a weld area" (note that in the context of applicant's invention, the term

“weld area” refers to an area of the cell previously welded during the manufacture of the individual cell) and in calling for disposing the cells in a housing. These differences do not patentably distinguish over the prior art. The patent to Alexandres (5,298,712) does not discuss the details of the cell 44. At the time applicant’s invention was made, it would have been obvious to have practiced the method of Alexandres (5,298,712) on any conventional battery cell. Applicant acknowledges that cells with pre-existing weld areas are known (see elements 11, 11W in figures 1a, b, c and the discussion at paragraph [0005] in applicant’s specification). It would have been obvious to have practiced the method of Alexandres (5,298,712) on a cell with a “weld area”, the well known nature of which is acknowledged by applicant, the motivation being to secure the advantages of the Alexandres (5,298,712) method for such a cell. Applicant shows that in the prior art cells with a weld area, this weld area is centrally located on the face of the battery (see the location of 11W in figure 1a). In applying the approach of Alexandres (5,298,712) to these prior art cells, at least two of the welding electrodes will necessarily be outside the weld area because figure 3 of Alexandres (5,298,712) shows that all electrodes are away from the center of the cell, thereby satisfying this feature of the claim. In regard to the limitations calling for disposing the cells in a housing, it would have been obvious to have placed the cells of Alexandres (5,298,712) in a housing, the motivation being the teachings of Hooke (4,322,597) that such is advantageous (see element 20 in figure 8 of Hooke (4,322,597)). In regard to the allusions to a “side” of the cell in claim 12 and to a “periphery” of a cell in claim 13, this language is broad enough to read on the positioning of the electrodes in Alexandres (5,298,712) wherein the electrodes would be positioned at the top side or top periphery of the cell.

(10) Response to Argument

Appellant argues that “... Alexandres does not disclose disposing a first electrode on the strap outside of the weld area and a second electrode on the at least one cell outside of the weld area.” Appellant further argues in connection with claim 11 that “Alexandres does not disclose placing any electrodes on the cell, as all three electrodes are placed on the strap”. These arguments are not persuasive. The electrodes of Alexandres touch the strap, but because the strap also touches the cell, the electrodes in Alexandres are “on” the cell in the sense of being in proximity to the cell (as an example, consider a coffee cup sitting on a saucer, both supported by a table. The coffee cup is “on” the table, even though it is not touching the table). Appellant further argues that in Alexandres “... all three electrodes are being placed on button cap 42, which is typically the weld area ... Accordingly, Alexandres discloses placing three electrodes inside the weld area”. This argument is not persuasive. In his paragraph [0005] of the specification, appellant discusses the meaning of the term “weld area” as he uses it, and gives an example of a “weld area” as a “negative collector inside the cell welded to the exterior of the can during production of [the] cell”. In the figures element 1W is shown as a weld area that is centrally disposed on the circular face of the cylindrical cell. Alexandres shows his electrodes as offset from the central axis of the cylindrical cell. If the Alexandres system were to weld cells that had been manufactured with a centrally disposed “weld area” as appellant discusses in connection with the prior art, it is considered obvious that the offset electrodes of Alexandres would be outside the weld area. In connection with claims 12 and 13, appellant argues that neither Alexandres nor the other prior art of record discloses the electrode contact as claimed.

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This argument is not persuasive. The Alexandres electrodes are disclosed as being at the top side or top periphery of the cell. The electrodes "contact" the side or periphery in the sense that the electrodes serve as electrical contactors for current flow through the cell to produce the desired weld.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Clifford C. Shaw

Primary Examiner

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CCS 4/28/2006

Conferees:

Patrick J. Ryan 

Steve Griffin 